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SUMMARY RECORD OF THE 65th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 15 April 1997, at 6 p.m.

Chairman: Mr. SOMOL (Czech Republic)

CONTENTS

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES, INCLUDING:

(a) QUESTION OF HUMAN RIGHTS IN CYPRUS (continued)

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The meeting was called to order at 6.20 p.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES, INCLUDING:

(a) QUESTION OF HUMAN RIGHTS IN CYPRUS (continued)

Draft resolution on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) (E/CN.4/1997/L.88)

1. Mr. SMITH (United States), introducing the draft resolution, said there were a number of corrections to be made. In operative paragraph 13 (b), the words "European Commission Monitoring Mission" should be replaced by "European Community Monitoring Mission"; in paragraphs 13 (b) and 28 (b), the words "Commission of Enquiry" should be replaced by "Council of Europe"; and in paragraph 22 (g), "1996" should be replaced by "1997".

2. Nearly 17 months after the signing of the Dayton Peace Agreement, an uneasy calm prevailed in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia, and there were disturbing signs that the parties to the Agreement and extremists on all sides had failed to implement the human rights safeguards which it had called for. He reviewed the main features of the draft resolution, which were contained in operative paragraphs 2, 3, 13 (a), 15, 22 and 32-42.

3. The draft resolution was intended to convey to the concerned parties the point that the international community expected them to make greater efforts to protect human rights and to honour the commitments that they had made. The Governments concerned, and the authorities of the Republika Srpska, must redouble their efforts to protect all their citizens, put and end to violence and human rights violations based on ethnic and religious hatred, and work towards a society where the rule of law prevailed.

4. Mrs. KLEIN (Secretary of the Commission) announced that Albania, France, Liechtenstein, Luxembourg, New Zealand, Portugal, Slovakia and Spain had joined the sponsors of the draft resolution.

5. Mr. SOCANEC (Observer for Croatia) said the draft resolution did not realistically reflect the human rights situation in the countries concerned because it failed to take into account the root causes of the war or to indicate clearly those responsible for, and the victims of, serious breaches of international humanitarian law.

6. He objected to the wording of paragraph 27 (b), which called on the Government of the Republic of Croatia to allow the expeditious return to their homes in all regions, in particular to the Krajina, of all refugees and displaced persons. Such a return could only be gradual and proportionate to confidence-building measures and economic reconstruction; moreover, his Government could not be held responsible for the decision of ethnic Serbs who did not wish to return to Croatia. The term "Krajina" was not recognized by

the Croatian Government; it had been coined by the self-proclaimed Croatian Serb authorities in reference to the territories of the Republic of Croatia which they had occupied.

7. With regard to the possibility of a mass exodus from eastern Slavonia, he noted that the President of the Security Council had stated on 7 March 1997 that the local Serb authorities were partially responsible for the local inhabitants' decision whether or not to remain in the region. The Croatian Government had frequently appealed to residents of that region to remain and had called upon citizens to vote in order to achieve peaceful reintegration.

8. He reminded the Commission that the procedures established in Rome on 18 February 1996 concerning the arrest, detention and trial of persons for violations of international humanitarian law concerned the implementation of the General Framework for Peace in Bosnia and Herzegovina and that Croatia was not bound by it.

9. The draft resolution should have mentioned positive developments in the Republic of Croatia, such as its admission to the Council of Europe and the establishment at the governmental level of a number of institutions for the protection of human rights. Croatia attached great importance to the issue of missing persons and regretted the resignation of the expert for the special process on missing persons in the territory of the former Yugoslavia and the fact that the draft resolution would discontinue that process.

10. Lastly, his Government considered it unnecessary to extend the mandate of the Special Rapporteur beyond the date of Croatia's ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the protocols thereto, which would occur no later than November 1997.

11. Mr. MALGUINOV (Russian Federation) said that while he appreciated the openness which had prevailed during consultations on the draft resolution and the contribution of the original sponsor, the United States, the draft was not objective, balanced or accurate and failed to take into consideration some of the complexities of the post-conflict period. As in the past, the situation in the Federal Republic of Yugoslavia was evaluated in a one-sided manner, particularly with regard to Kosovo and the measures taken by the Government in order to guarantee the rights and freedoms of citizens and widen dialogue with international human rights bodies. The draft resolution also made unsubstantiated allegations of discriminatory legislation and governmental measures.

12. The purpose of Commission resolutions was to raise the level of protection of human rights and to avoid encouraging acts of violence or separatism. The fact that various names, facts and events were mentioned out of context in the draft precluded an objective assessment of the situation. The references to the "Federal Republic of Yugoslavia" were anachronistic and, in future, should be brought into line with the practice agreed upon by the majority of States. Moreover, that country's membership of international organizations should long since have been restored yet the resolution appeared to take the opposite approach.

13. He nevertheless supported the call for all States in the territory of the former Yugoslavia to ensure the protection of human rights, overcome the post-conflict syndrome and seek mutually acceptable solutions to their problems. He welcomed the constructive statement made by the representative of the United States in his introduction of the draft resolution.

14. For the above-mentioned reasons, his delegation requested a roll-call vote on paragraphs 18, 29 (d), (f), (g) and (h), and 31 and asked that those paragraphs should be voted on jointly. His delegation would abstain in that vote but was prepared to join the consensus on the resolution as a whole.

15. Mr. PETRESKI (Observer for the former Yugoslav Republic of Macedonia) stated that the proper name of his country was the Republic of Macedonia. His Government took the view that the international community should develop different approaches to human rights monitoring in order to find solutions to genuine problems and commend positive examples. It welcomed the constructive dialogue which it had had with the Special Rapporteur and was pleased to note that the important progress in the human rights situation in his country had been recognized. It considered that respect for human rights was a legitimate concern of the international community and, in that regard, welcomed cooperation with international organizations within the framework of the regular mechanisms and institutions of which it was a member and which were based on the principle of equality of States and respect for the specific features of individual States. It therefore welcomed the recommendation in the draft resolution that consideration of the Republic of Macedonia in the Special Rapporteur's mandate should be discontinued no later than the end of September 1997.

16. Mr. FADZAN (Observer for Bosnia and Herzegovina) said his delegation considered the text of draft resolution E/CN.4/1997/L.88 acceptable because it covered the important aspects of the problem, including use of the correct name for the former Republic of Yugoslavia (Serbia and Montenegro), and thanked the delegation of the United States for its contribution to the achievement of consensus on the text within the five-nation contact group.

17. However, there was a lack of political will to stand firmly behind the principles expressed in the Dayton Peace Agreement and to provide a real response to the almost catastrophic situation of human rights in the three countries concerned. Because there were political obstacles to acceptance of the cause-and-effect relationship with regard to human rights violations in those countries, the action taken to prevent such violations was in the nature of a lowest possible common denominator.

18. His delegation reiterated its support for the Special Rapporteur's most recent statement made before the Commission, which had contained suggestions for principles and activities that could move the peace process beyond its current stalemate and lead to reconciliation and reconstruction of a multi-ethnic, democratic, liberal and tolerant civil society in Bosnia and Herzegovina.

19. Mr. TARMIDZI (Indonesia), speaking on behalf of the Organization of the Islamic Conference (OIC), said the OIC member States considered that the

draft resolution was insufficiently focused, weak and unlikely to accomplish its objectives. However, they would not stand in the way of consensus on its adoption.

20. Mr. COMBA (Centre for Human Rights), explaining the financial implications of the draft resolution, said that extension of the mandate of the Special Rapporteur for one year (para. 42) would require an allocation of US$ 112,200 under section 21 of the programme budget for the biennium 1996-1997. The budgetary requirements for the first quarter of 1998 would be included in the proposed programme budget for the biennium 1998-1999.

21. Mr. van WULFFTEN PALTHE (Netherlands), speaking in explanation of vote before the voting, said his delegation appreciated the importance of draft resolution L.88 for the advancement of human rights in the countries concerned. However, with regard to the section on missing persons, his delegation regretted that no effort had been made to maintain the special process on missing persons, granting it a clear mandate and the full backing of the world community, and that the expert for the special process had been compelled to resign. The section on missing persons did not reflect the international community's commitment to solving the many remaining cases of missing persons in the region, notably through exhumation and identification of mortal remains, and assigned that task to so many agencies that genuine action appeared impossible. The Netherlands was, therefore, unable to become a sponsor of the draft resolution as in previous years but would not oppose its adoption.

22. Ms. RIVERO (Uruguay), speaking in explanation of vote before the voting, said that while her delegation would join the consensus on the draft resolution, it was concerned at the termination of the mandate of the expert for the special process and believed that much remained to be done in that area. It also feared that the many tasks entrusted to the Special Rapporteur might make it difficult for her to fulfil her mandate effectively.

23. At the request of the representative of the Russian Federation, a vote was taken by roll-call on paragraphs 18, 29 (d), (f), (g) and (h), and 31 jointly.

24. Ireland, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Algeria, Argentina, Austria, Bangladesh, Benin, Bhutan, Brazil, Bulgaria, Canada, Chile, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, France, Gabon, Germany, Ireland, Italy, Japan, Malaysia, Netherlands, Nicaragua, Pakistan, Philippines, Republic of Korea, South Africa, Uganda, Ukraine, United Kingdom, United States, Uruguay, Zaire.

Against: None

Abstaining: Angola, Belarus, Cape Verde, China, Colombia, Guinea, India, Indonesia, Madagascar, Mali, Mexico, Mozambique, Nepal, Russian Federation, Sri Lanka, Zimbabwe.

25. Paragraphs 18, 29 (d), (f), (g) and (h), and 31 were adopted by 35 votes to 0, with 16 abstentions.

26. Draft resolution E/CN.4/1997/L.88, as amended, was adopted without a vote.

Draft resolution on human rights in Zaire (E/CN.4/1997/L.89)

27. Mr. van WULFFTEN PALTHE (Netherlands), introducing the draft resolution, said that the political situation in Zaire was changing rapidly and a negotiated solution to the conflict remained out of reach. The draft resolution called upon all parties concerned to show restraint, respect the terms of the democratic transition process, seek a political solution and refrain from further violence. The sponsors were deeply concerned at the human rights situation in Zaire, and particularly the continued impunity enjoyed by the army and the security forces, arbitrary deprivation of nationality, and the continued lack of political, civil, economic, social and cultural rights.

28. They welcomed the opening of the office of the United Nations High Commissioner for Human Rights in Kinshasa and called upon the authorities to cooperate fully with that office, its human rights observers and the Special Rapporteur. A new element in the draft was the Commission's decision to field a joint mission consisting of the Special Rapporteurs on the situation of human rights in Zaire and on extrajudicial, summary or arbitrary executions and a member of the Working Group on Enforced or Involuntary Disappearances, to investigate allegations of massacres and other issues affecting human rights which arose from the conflict in eastern Zaire (para. 6). He thanked the Zairian delegation for its constructive participation in the negotiations on the draft resolution.

29. Mrs. KLEIN (Secretary of the Commission) announced that Argentina, Australia, Estonia, Japan, Norway, Poland, Slovakia and Switzerland had joined the sponsors of the draft resolution.

30. Mr. MULUME (Zaire) said that his country was experiencing a major political upheaval and a serious economic and social crisis; the war against the Zairian people had spread to 7 of the country's 11 provinces.

31. The three reports submitted to the Commission by the Special Rapporteur, which had formed the basis of the draft resolution, did not reflect the progress made in various areas of civil and political rights or in the transition to democracy which had been interrupted by war in the eastern part of the country and which was to have culminated in a general election in May 1997. The establishment of the National Electoral Commission and the office of the United Nations High Commissioner for Human Rights in Kinshasa demonstrated the Zairian Government's willingness to cooperate with the United Nations in the process of democratization and the promotion of human rights. The failure of the United Nations and the Special Rapporteur to issue an official and timely condemnation of the massacres and violations of human rights and international humanitarian law in eastern Zaire made their recent expressions of indignation and anger at the plight of the Rwandan refugees and displaced Zairians appear hypocritical and even cynical. Furthermore, the

question of nationality was a matter of State sovereignty and was not subject to interference from the international community or the Commission. Any problems in that regard should be solved through dialogue within the framework of the international conventions to which Zaire was a party; however, that procedure could in no way legitimize fraudulent acquisition of Zairian nationality.

32. Continuation of the process of democratization with a view to the establishment of the rule of law and the international community's support for the rehabilitation of Zaire, particularly the eastern part of the country, were the best guarantees of improved protection of human rights there. The National Commission for the Promotion and Protection of Human Rights should be strengthened in cooperation with civil society and human rights organizations. To that end, his Government hoped to contact the High Commissioner for Human Rights and the country's other partners in order to set up a technical cooperation programme aimed at strengthening national human rights institutions. The effectiveness of the fact-finding mission on massacres and human rights violations in eastern Zaire, long requested by his Government, would depend on the speed with which it was carried out and its results published.

33. Mr. LI BAODONG (China) said the conflict in Zaire constituted a major disaster for its own citizens and the refugees stranded in the eastern part of the country and posed a threat to peace and stability in the Great Lakes region and the entire continent. The Organization of African Unity (OAU) had recently convened a special summit in Lomé in order to seek a solution to the crisis. His Government supported the efforts of the OAU, the United Nations and other African countries in that regard and it urged the parties concerned to put an end to the conflict through peaceful negotiation in the interest of Zaire's development and the protection of human rights.

34. Mr. ZAHRAN (Egypt) welcomed the efforts to put an end to the tragedy and human rights violations in Zaire by the means described in the draft resolution. Of particular importance were preparations for the forthcoming elections, a return to political stability and reconstruction, all of which would require a solution to the country's domestic problems on the basis of independence, unity and preservation of its borders. Such a solution would make it possible for displaced persons and refugees to return to their homes and for human rights organizations to do their work. His delegation would vote in favour of the draft resolution and called on the Government of Zaire to cooperate with the High Commissioners for Human Rights in ensuring meticulous implementation of its provisions.

35. Mr. DEMBRI (Algeria) said it was important for OAU mediation in Zaire, as demonstrated at the recent summit in Lomé, to continue. His own country was actively engaged in negotiations aimed at encouraging national reconciliation in that country. The current problems were a legacy of the colonial era and resulted from interference by non-African Powers. If African wisdom was to prevail and the Zairians were to find their own ways of ensuring the return of the refugees and preventing ethnic strife, those external Powers must refrain from attempting to determine who would govern the country.

36. Mr. COMBA (Centre for Human Rights), explaining the financial implications of the draft resolution, said the costs of the joint mission by the Special Rapporteurs on the situation of human rights in Zaire and on extrajudicial, summary or arbitrary executions and a member of the Working Group on Enforced or Involuntary Disappearances (para. 6 (a)) would be met through voluntary contributions. Extension of the mandate of the Special Rapporteur for one year (para. 6 (c)) would require an allocation of US$ 88,600 under section 21 of the programme budget for the biennium 1996-1997. The budgetary requirements for the first quarter of 1998 would be included in the proposed programme budget for the biennium 1998-1999.

37. Draft resolution E/CN.4/1997/L.89 was adopted without a vote.

Draft resolution on the situation of human rights in the Sudan (E/CN.4/1997/L.90)

38. Mrs. RUBIN (United States), introducing the draft resolution, said the sponsors believed that, as in previous years, the text accurately reflected the grievous conditions and activities that continued to exist in the Sudan. On the other hand, they appreciated the spirit of cooperation displayed by the Sudanese delegation, which, by accepting the language of the resolution, had implicitly recognized the gravity of the situation and acknowledged that some agents of the Sudanese authorities had authorized or committed some of the worst human rights violations in the country.

39. The next step was for the Government to implement the recommendations made in the draft resolution and by the special and thematic rapporteurs and to allow the Special Rapporteur to return to the Sudan and visit all parts of the country. The Government must follow through on its commitment to conduct or permit a thorough investigation of possible human rights violations in the Sudan and to share the results of those investigations with its own people and the Commission. Those responsible for human rights violations must be tried in accordance with internationally acceptable standards and, if found guilty, punished under the law. She noted that the Government had expressed its willingness to seek technical assistance from the Centre for Human Rights and other appropriate bodies.

40. Mrs. KLEIN (Secretary of the Commission) announced that Argentina, Belgium, France, Greece, Ireland, Israel, Japan, Liechtenstein and Luxembourg had joined the sponsors of the draft resolution.

41. Mr. EL MUFTI (Observer for the Sudan) expressed his appreciation to the delegation of the United States for agreeing to include some positive elements in the text of the draft resolution. However, the draft contained many unverified allegations of violations, and some of the language used was based on misinformation derived from reports and statements by NGOs allied with armed rebel factions. In view of the explanation provided by his Government, which had been intended to inaugurate a new era of cooperation with the Special Rapporteur on the situation of human rights in the Sudan, the negative references in the draft resolution to the Special Rapporteur's most recent visit and to the circumstances surrounding its termination were inappropriate. Lastly, his delegation had repeatedly expressed its objections to the placement of human rights field officers, as proposed in paragraphs 25 and 26,

since the Sudan was guaranteeing a regular flow of information and had shown its willingness to deal with and correct any proven human rights violations. Insistence on such measures was not conducive to the promotion and protection of human rights or to the cooperation required in that context.

42. Mr. COMBA (Centre for Human Rights), explaining the financial implications of the draft resolution, said that extension of the mandate of the Special Rapporteur for one year (para. 20) would require an allocation of US$ 73,400 under section 21 of the programme budget for the biennium 1996-1997. The budgetary requirements for the first quarter of 1998 would be included in the proposed programme budget for the biennium 1998-1999.

43. Mr. ZAHRAN (Egypt), speaking in explanation of vote before the voting, stressed the need to ensure observance, and condemn all violations, of human rights and fundamental freedoms in all parts of the world. His delegation had often stated that the Commission should not countenance double standards and selectivity or consider matters beyond its mandate. Although it was important to ensure respect for human rights and fundamental freedoms, it was essential to respect the sovereignty of the Sudan. The authorities of the Sudan must also maintain neighbourly relations with other States and not interfere in their affairs or foster terrorism.

44. If there was a separate vote on paragraph 25 of the draft resolution, which recommended that priority should be given to the placement of human rights field officers to monitor the situation of human rights in the Sudan, his delegation would vote against it because the political and legal implications of the placement of such observers were not clear. If the draft resolution was put to a vote, his delegation would abstain.

45. Mr. DEMBRI (Algeria) said he shared with other delegations the hope that the Sudanese Government would commit itself to respect for democratic freedoms and human rights. However, he regretted that the frequent references in the draft resolution to the activities of terrorist groups in various parts of the country attributed such activities only to the Government rather than to the non-State elements which were, in fact, involved.

46. He shared the representative of Egypt's views concerning article 25 of the draft resolution. Traditionally, all thematic and special rapporteurs were under the control of the Commission; however, the words "under the modalities and with the objectives suggested by the Special Rapporteur" would give full autonomy to the Special Rapporteur, thereby threatening State sovereignty. Unless that paragraph was amended, his delegation would abstain in the vote on the draft resolution.

47. Draft resolution E/CN.4/1997/L.90 was adopted without a vote.

Draft resolution on the situation of human rights in China (E/CN.4/1997/L.91)

48. Mr. LEHMANN (Denmark), introducing the draft resolution, said that all States Members of the United Nations were obliged under the Charter and other applicable instruments to protect human rights and fundamental freedoms and should be held accountable for the international human rights standards they had endorsed.

49. The draft resolution recognized the fact that China was a party to various international instruments and that it had succeeded in enhancing its people's enjoyment of their economic rights. The Chinese Government's recent announcement that it would soon sign the International Covenant on Economic, Social and Cultural Rights was a welcome first step towards accession to that instrument. However, the Commission could no longer remain silent in the face of continued reports of violations of basic civil and political rights, including freedom of assembly, association, expression and religion and the right to due process and a fair trial. The plight of the Tibetans was a further concern.

50. The sponsors considered that it was time for the High Commissioner for Human Rights to enter into dialogue with the Chinese Government in accordance with his mandate under paragraph 4 (g) of General Assembly resolution 48/141 (1993). The High Commissioner was, in turn, asked to report to the Commission on the progress of that dialogue. The sponsors did not wish the draft resolution to be interpreted as confrontational in nature. The proposed dialogue fell within the mandate of the High Commissioner which had the approval of the Chinese Government; moreover, such bilateral dialogue in no way excluded multilateral dialogue with other parties. Lastly, he noted that paragraph 4 of the Vienna Declaration and Programme of Action stated that the promotion and protection of all human rights constituted a legitimate concern of the international community.

51. Mr. WU Jianmin (China) said that draft resolution E/CN.4/1997/L.91 was the seventh of its kind to be placed before the Commission by certain Western countries. It was a gross distortion of reality to assert that China had a deplorable human rights record. That had indeed been the case prior to the 1949 Revolution, the very purpose of which had been to make the Chinese people the masters of their own destiny. China's ongoing modernization programme was in essence a war against poverty, backwardness and hunger. Since 1978, when the country had begun to implement its policy of reform, nearly 200 million people had been lifted out of poverty. Over the past 20 years, over 300 laws and regulations had been adopted by China's legislative body and more than 4,000 regulations had been passed by local people's congresses. His country had made unprecedented progress towards the establishment of democracy and a legal system, and his Government had made tremendous efforts to promote the civil, political, economic, social and cultural rights of the Chinese people.

52. The real purpose of certain Western countries in repeatedly proposing anti-China resolutions was to attempt to dominate China's fate in what was perhaps a legacy of the colonial era. Since the initiation of reform, China had sent hundreds of thousands of students abroad in order to learn from others. However, many countries which had followed the pattern prescribed by the West were currently facing economic collapse, war and internal strife, which were in sharp contrast to the increasing prosperity of China. If 1 per cent of the Chinese population had fled the country as a result of a similar crisis, the result would have been an overnight disaster for Asia and the entire world as 12 million people flooded into east Asia. The Chinese people had followed their own path for over 5,000 years. No force on earth, let alone a few anti-China draft resolutions, could stop the country's 1.2 billion people from advancing.

53. It was sheer demagogy to claim that the no-action motion proposed by his delegation constituted a request for special treatment or non-cooperation. China had ratified or acceded to 17 international human rights instruments, reported periodically to the treaty bodies and respected their views. The Commission voted on draft resolutions approximately one week after it began consideration of human rights situations in the country concerned. During that week, China had become the focus of attack by certain Western countries, which claimed that the annual Chinese no-action motion did not conform to the rules of procedure. In fact, no-action motions were proposed at the meetings of many United Nations bodies and were clearly provided for in the rules of procedure: they had been proposed in the Commission on six occasions during the past seven years.

54. He appealed to the countries which had submitted the draft resolution to return to the path of dialogue and cooperation. The draft was a foolish act which went against the trend of history; time was on the side of the Chinese, and he advised the sponsors to give up their doomed cause or suffer repeated defeat. It did not matter that States disagreed on human rights issues; what was important was to resolve those differences through dialogue on the basis of equality. The draft resolution was directed not only at China, but at all developing and justice-loving countries.

55. His delegation accordingly proposed, in accordance with rule 65 (2) of the rules of procedure, that the Commission should take no action on draft resolution L.91 and requested a roll-call vote on that motion. It appealed to delegations to support that motion since what had happened to China could one day happen to their own countries.

56. The CHAIRMAN announced that the following 14 speakers wished to explain their votes before the voting.

57. Mr. BAUM (Germany) said his delegation took the view that the Commission was fully entitled to discuss and take action on human rights situations in all parts of the world. All members of the Commission had been present at the conference which had resulted in the Vienna Declaration and Programme of Action, in which it had been established that the situation of human rights in any country was a legitimate concern of the international community. Members of the Commission had a particular responsibility for the promotion and protection of human rights and should ensure that each situation was dealt with on its merits. As in previous years, his delegation would vote against the procedural motion proposed by China.

58. Mr. SHATTUCK (United States) said his delegation did not seek confrontation with China and believed the Commission was an appropriate forum for discussion of the situation of human rights in that country. It objected to the no-action motion proposed by China because it believed that there were serious human rights concerns in that country which should be considered by the Commission and because it was concerned that any effort to bypass the Commission might undermine its integrity and give the impression that its members were indifferent to the very principles that it was charged with defending. By voting against the Chinese motion, members would keep faith with women and men around the world who had suffered for daring to stand up for democracy and freedom.

59. Ms. ANDERSON (Ireland) said her delegation associated itself with the statement made by the representative of Denmark. She recognized that every country represented in the Commission had its own history and individuality but hoped that they shared a readiness to recognize problems where they existed and to discuss ways of addressing them together. There was no question of imposing a national or regional perspective; the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and the internationally accepted human rights instruments provided a shared basis for discussion. Membership of the Commission entailed both rights and obligations, and the Commission would fail the international community if it allowed procedural devices to block discussion of issues of substance. She therefore urged the members of the Commission to vote against the no-action motion and in favour of the draft resolution.

60. Mr. GOONETILLEKE (Sri Lanka) said that no-action motions were used from time to time by other United Nations bodies, including the General Assembly, in cases where the majority of the members did not think that adoption of a draft resolution was the best way to achieve results. Having made several unsuccessful attempts to introduce draft resolutions on the situation of human rights in China, the sponsors should have sought alternative ways of persuading China to improve that situation through consultation, dialogue and cooperation. Paragraph 1 of the draft acknowledged that there had been improvement in that regard, and the Commission should encourage China to continue to make progress rather than supporting a resolution which could not produce the desired result.

61. His delegation therefore supported the no-action motion and hoped that during the next year, the interested parties would attempt to engage China in genuine dialogue with a view to improving the human rights situation in that country.

62. Mr. TOSCANO (Italy) said that, once again, the Commission had before it a no-action motion aimed at preventing its members from expressing their opinion on a draft resolution which unquestionably fell within its mandate and competence. While consensus was desirable and cooperation and non-confrontation should be the Commission's main goals, its members should be able to express disagreement, when necessary, by voting. His delegation would vote against the no-action motion.

63. Mr. KONISHI (Japan) said he had already stated his delegation's position on human rights in China. While Japan attached great importance to dialogue and technical cooperation and had not become a sponsor of the draft resolution, it considered that the promotion and protection of human rights was a legitimate concern of the international community and that the Commission had a particular responsibility in that regard. His delegation was therefore unable to support the no-action motion.

64. Mr. BERNARD (France) said he agreed with previous speakers that the Commission's right to consider the situation of human rights in any country should be respected by all members. His delegation would vote against the no-action motion.

65. Mr. ALI (Malaysia) said the fact that the draft resolution on the human rights situation in China had been rejected for the past six years showed that the Commission saw no need to consider it. A constructive approach to the promotion and protection of human rights through dialogue was far more likely to achieve results. His delegation would vote in favour of the no-action motion.

66. Mr. HYNES (Canada) said the draft resolution and the no-action motion presented a dilemma for many members of the Commission. At the procedural level, there was no good reason why the Commission should not proceed, as it had done in many other situations, to direct action on the merits of the draft resolution or why China should be treated differently from any other country. On the other hand, there was, in fact, a difference between China and other countries; it was the most populous nation on earth, a major political and economic Power, and a permanent member of the Security Council, and its people and Government had a right to be proud of their crucial role in the international community. At the same time, there were serious grounds for concern at China's failure to live up to its international obligations.

67. Canada had decided not to sponsor the draft resolution in 1997 but, instead, to seek other ways of addressing the problem in order to bring about positive change with regard to respect for human rights in China. It hoped that the relevant negotiations would be both bilateral and multilateral in nature and expected China to follow up on its commitment to broaden cooperation with the United Nations in the field of human rights. Nevertheless, his delegation considered that the Commission should not be prevented from taking a decision on the merits of the draft resolution. It would therefore vote against the no-action motion and, should the draft resolution come to a vote, would vote in favour of it.

68. Mr. PERREIRA (Angola) said the fact that the draft resolution had been rejected for the past six years showed that it was unnecessary; moreover, the wording of the current version was virtually identical to that of previous years. His delegation failed to understand why some countries persisted in wasting time and misusing United Nations resources in such a futile exercise and would support the no-action motion.

69. Mr. KRAVETZ (El Salvador) said his delegation would vote against the no-action motion because it considered that such motions were, in principle, incompatible with the Commission's duty to promote human rights throughout the world.

70. Mr. STROHAL (Austria) said the no-action motion was unacceptable in principle because it presupposed the substantive incompetence of the Commission, despite the fact that the question of the violation of human rights in any part of the world had been an item on the Commission's agenda for many years. The no-action motion could be appropriate only in the context of rule 65 of the rules of procedure, which dealt with situations where two or more proposals on a single topic had been submitted to the Commission; that did not apply to draft resolution L.91. There were no grounds for arguing that the draft resolution was in any way beyond the purview of the Commission and, in any case, all Governments represented at the Vienna Conference had agreed that the promotion and protection of human rights was a legitimate

concern of the international community. The draft resolution was prompted not by a wish to dominate, but by legitimate concern and a constructive spirit of cooperation. His delegation therefore urged all members to vote against the no-action motion in order to preserve the credibility of the Commission, the right of its members to take a position on the substance of draft resolution L.91 and the cause of human rights.

71. Mr. Joun Yung SUN (Republic of Korea) said that while his delegation recognized that there was room for improvement in the human rights situation in China, it was encouraged by the efforts made by that country, notably in the area of codification of legal practice. It interpreted the Chinese Government's willingness to sign the International Covenant on Economic, Social and Cultural Rights in 1997 as a sign of its commitment in that regard and welcomed the Government's readiness to exchange information on human rights issues. His delegation was convinced of the importance of dialogue as a means of resolving such issues and would abstain in the vote on the no-action motion.

72. Mr. DEMBRI (Algeria) said he shared other delegations' concern for the situation of human rights throughout the world. No country, whatever its degree of economic, social or cultural development, could claim to instruct another in that regard. He was disturbed by the fact that draft resolution L.91 was not the result of consensus or extensive consultations aimed at avoiding confrontation. Its sponsors were essentially the States of the Western world and, as the media had widely reported, even they had disagreed on its substance.

73. It was true that the no-action motion blocked debate; however, such a motion was permitted under the rules of procedure, which had been agreed by all members of the Commission. The draft resolution had been rejected for the past six years and, throughout that time, there had been no general will to implement rule 77 or 78 of the rules of procedure by amending or suspending any of its rules. The claims of some delegations to be upholding democratic practice were merely a pretext for trying to advance their own position by amending the Committee's procedure. The Chinese delegation was fully entitled to assert its rights under the rules of procedure, and his own delegation would vote in favour of the no-action motion.

74. Mr. KRPAC (Czech Republic) said he concurred with those delegations, particularly those of Ireland and Australia, which had stated that the Commission was competent to deal with the matter under discussion and that the no-action motion was inappropriate. His own delegation would prefer the Commission to engage in a substantive discussion of the issue, as was usual under agenda item 10, rather than adopting the procedural motion proposed by China.

75. Mr. van WULFFTEN PALTHE (Netherlands) said there was nothing inherently illegal about no-action motions. He could not support the Algerian representative's suggestion that the Commission should amend its rules of procedure in order to remove that possibility. However, the no-action motion was designed to allow United Nations bodies to avoid dealing with extraneous issues, and it could hardly be argued that the situation of human rights in China was extraneous to the Commission. A country like China, which was

large, important and a permanent member of the Security Council, had a special responsibility and, by seeking to abuse the Commission's rules of procedure in order to avoid debate on its own situation, set a bad example for the Organization as a whole and those of its members which sought serious debate not only on human rights, but on other issues as well. No other country abused the no-action motion in that way, and he hoped that China had done so for the last time.

76. Mr. ALFONSO MARTINEZ (Cuba) said that the no-action motion was the best way of combating an initiative which had nothing to do with current reality in China and introduced an element of confrontation which, rather than encouraging international cooperation, could only worsen the already politicized atmosphere of the Commission.

77. Rule 65 of the rules of procedure had existed long before 1971, when China's legitimate position in the United Nations had been restored. It was not true that that rule was intended to be used only when more than one resolution on a single topic had been placed before the Commission; rather, as the representative of Sri Lanka had said, it could be invoked whenever the majority of the members of the Commission considered that a draft resolution or decision was not the best way of addressing a problem. A no-action motion in no way implied the Commission was not competent to deal with an issue; no one doubted its competence to study the situation of human rights in any Member State. Furthermore, the representative of the Netherlands had been wrong in stating that China was abusing the proper function of the no-action motion. The real abuse was to compel the Commission year after year to face the issue of a draft resolution which it did not wish to consider. Rejection of the draft resolution strengthened, rather than calling into question, the credibility of the Commission and, since such a motion required the approval of the majority, it was in no way undemocratic.

78. Mr. SIMKHADA (Nepal) said his delegation had consistently maintained that singling out a country or group of countries was not conducive to improvement of the human rights situation unless what was involved were persistent, blatant human rights violations in which due process was consistently flouted. As a close neighbour of China, Nepal had been in a position to witness all the changes in that society. China had amply demonstrated its willingness to engage in dialogue and cooperation with a view to further improvement. His delegation therefore associated itself with the statement made by the representative of Sri Lanka and would support the no-action motion.

79. Mr. STEEL (United Kingdom) said the matter under discussion was not the human rights record of China, but the right of the Commission to consider a draft resolution on its merits. He regretted that, once again, a powerful country and permanent member of the Security Council whose record in many ways deserved respect was trying, through pressure and blandishments, to stifle discussion of a topic which was of genuine concern to members of the Commission and the outside world. No other country, whether the United States, the Russian Federation, Cuba, Colombia or, in former years, the Soviet Union, Chile or South Africa, had sought to dictate to the Commission in that way.

80. The representative of China had adduced a number of fallacious arguments in support of the no-action motion. He had claimed that draft resolution L.91 did not fall within the terms of agenda item 10 because the situation of human rights in China did not reveal a "consistent pattern of gross violations of human rights". However, that wording appeared only in subparagraph (b) of the agenda item, the main subject of which was the violation of human rights and fundamental freedoms in any part of the world. He had also stated that the tabling of the resolution indicated selectivity, but what could be more selective than to argue that the Commission could discuss human rights violations anywhere in the world except China? He had claimed that the draft resolution lacked objectivity. The question whether it did so could be dealt with during discussion of the draft, at which time his own delegation would be pleased to listen to the Chinese delegation's arguments in that regard. However, the question had no bearing on the issue of whether that discussion should be held. Lastly, he himself was puzzled by the Chinese representative's claim that the draft resolution demonstrated a lack of impartiality since impartiality would appear to require that the Commission should give no special treatment to any country, whereas China was, in fact, asking it to do so. Impartiality also required that any views expressed or decisions taken in the Commission should be based on the merits of the case at hand rather than on the identity of the country concerned.

81. The representative of Austria had correctly stated that it was a misreading to use rule 65 (2) of the rules of procedure as the basis for a no-action motion. It was clear that the "motion requiring that no decision be taken on a proposal" in rule 65 (2) referred to a situation where "two or more proposals ... relate to the same question" (rule 65 (1)). The point was not a technical one. China's no-action motion was, in fact, a concealed invocation of rule 54 of the rules of procedure, which stated that "a motion calling for a decision on the competence of the Commission to adopt a proposal submitted to it shall be put to the vote before a vote is taken on the proposal in question".

82. His own delegation considered that the Commission was competent to discuss the situation of human rights in any country whatever, without prejudice to its ultimate decision on that situation, and invited delegations to vindicate the competence of the Commission and to assert their independence by voting against the no-action motion.

83. Mr. LEHMANN (Denmark) said draft resolution L.91 could not be viewed as confrontational since it called upon the Government of China to engage in a dialogue with the High Commissioner for Human Rights and requested the High Commissioner to report to the Commission on the progress of that dialogue. The no-action motion was, in effect, a challenge to the competence and credibility of the Commission, thus raising an important principle regardless of any delegation's position on the substantive issues raised in the draft resolution. The motion introduced an element of selectivity which ran counter to the letter and spirit of the Vienna Declaration and Programme of Action, paragraph 32 of which reaffirmed "the importance of ensuring the universality, objectivity and non-selectivity of the consideration of human rights issues". A vote against the no-action motion would, therefore, preserve the competence and credibility of the Commission and its democratic procedures.

84. Mr. ZAHRAN (Egypt) said he had already conveyed his delegation's views on the importance of not applying double standards with regard to human rights issues in various parts of the world and had therefore abstained in the voting on a number of draft resolutions. His delegation took the view that dialogue and cooperation were the best way of promoting human rights and regretted that it had not been consulted during the preparation of draft resolution L.91, in contrast with many other draft resolutions which it had been able to support because the various positions of the Commission's members and observers had been taken into consideration. He had noted a certain politicization in the Commission's debates. It was important for the Commission to ensure dialogue and transparency in the preparation of draft resolutions and to resort to voting only where consensus proved impossible. No delegation should be deprived of its right to invoke rule 65 (2) of the rules of procedure. For all those reasons, his delegation would vote in favour of the no-action motion.

85. Mr. CHOWDHURY (Bangladesh) said he had noted with concern the rising tension and increasing acrimony between delegations. The Commission had major achievements of which to be proud and thrusts and parries, whi'e normal in such a situation, must be kept within acceptable limits. The Commission should testify to the fact that society had come of age; he knew of no other body where States and non-States, Governments and NGOs interacted so freely, yet the Commission could be far more effective than at present. Draft resolution L.91 was, perhaps, not the best way of achieving its own goals. Only dialogue and consultation could lead to change. His delegation would, therefore, prefer that no action should be taken on the draft resolution.

86. Mr. AKRAM (Pakistan) said he had read draft resolution L.91 with regret and consternation and hoped that the Commission would reject it as it had done for the past six years. Under Article 55 of the Charter the Commission's primary responsibility was to promote stability and friendly relations among States. It was clear from the debate that the draft resolution was, instead, likely to promote confrontation and conflict among major Powers. Pakistan had good relations with the sponsors of the draft resolution and with China and did not wish to see confrontation between them. Rule 65 (2) of the rules of procedure had been specifically intended to ensure that no action was taken which was contrary to the Commission's objectives; it was, therefore, perfectly appropriate to the situation.

87. Some had said that China sought to dictate to the Commission. In reality, the boot was on the other foot; China had not asked anyone to submit the draft resolution. Those who sought to dictate to the Commission were those who persisted in submitting that draft year after year. There were other, far more serious, situations of persistent violations of human rights which the sponsors of the draft resolution, and the Commission as a whole, chose to ignore year after year. His own delegation had brought some of those situations to the attention of most of the sponsors and had been told not to raise such issues in the Commission because the countries concerned would refuse to cooperate with the human rights treaty bodies. There was no question that China was being selectively and politically targeted because it was a major emerging Power in Asia and the third world. Anyone who had visited the country knew that the human rights situation there was improving and had witnessed the transformation in the lives of the Chinese people.

88. The representative of the Netherlands had expressed the hope that China had proposed a no-action motion for the last time. He, in turn, hoped that the sponsors of the doomed draft resolution had placed it before the Commission for the last time.

89. At the request of the representative of China, a vote was taken by roll-call on the no-action motion which his delegation had proposed.

90. Bangladesh, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Algeria, Angola, Bangladesh, Belarus, Benin, Bhutan, Cape Verde, China, Colombia, Cuba, Egypt, Ethiopia, Gabon, Guinea, India, Indonesia, Madagascar, Malaysia, Mali, Mozambique, Nepal, Pakistan, Sri Lanka, Uganda, Ukraine, Zimbabwe, Zaire.

Against: Austria, Bulgaria, Canada, Chile, Czech Republic, Denmark, El Salvador, France, Germany, Ireland, Italy, Japan, Netherlands, Nicaragua, South Africa, United Kingdom, United States.

Abstaining: Argentina, Brazil, Dominican Republic, Ecuador, Mexico, Philippines, Republic of Korea, Russian Federation, Uruguay.

91. The no-action motion proposed by China was adopted by 27 votes to 17, with 9 abstentions.

The meeting rose at 9.20 p.m.